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**Submission by Australians for Just Refugee Programs Inc. (*A Just Australia*) with Ms Naleya Everson to the**

**Senate Legal and Constitutional References Committee Inquiry into the Administration and Operation of the Migration Act 1958.**

Submitted by:



Kate Gauthier

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*“It is necessary always to bear in mind that an applicant for refugee status is, on one view of events, engaged in an often desperate battle for freedom, if not life itself.”*

Gummow and Hayne JJ: *Abebe v Minister for Immigration and Multicultural Affairs*<sup>1</sup>.

This submission deals with the lack of consideration of the psychological effects of torture and trauma, in the protection visa application process.

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<sup>1</sup> (1999) 197 CLR 510 at 577-8

The lack of guidelines and education on psychological issues relating to torture and trauma, in a decision making process which relies so much on impressions of the evidence given by applicants, has resulted in many decisions being based on incorrect assumptions and analysis. Specifically, there is a general lack of understanding of the effects of torture and trauma - so common in the experience of protection visa applicants- on the way that asylum seekers recount their history during the application process. A lack of information available to decision makers, on the effects of torture or trauma in general and in relation to specific cases. And a lack of weight or consideration given to the expert evidence of psychiatrists, doctors and psychologists by decision-makers.

There are many cases, where case officers or tribunal members have made credibility<sup>2</sup> findings based on inconsistencies or omissions which are symptomatic of underlying psychological illness as a result of trauma. Either because the condition and its implications are not brought to the attention of the decision maker<sup>3</sup> or because they fail to have due regard to the implications of the condition and the opinion of experts<sup>4</sup>. Some of these cases have been exposed through judicial review, yet many others, particularly those where no evidence has been available regarding an applicant's condition, have gone unnoticed and unreviewed. And even in those cases which are reviewed by the courts, the problem is not always rectified because of the limited scope of review. In some cases decision-makers have been given information regarding the effect of trauma on refugee applicants and have realised that their earlier decisions were wrong.<sup>5</sup>

The attached article "*The mental health impacts of migration: the law and its effects. Failing to understand: refugee determination and the traumatised applicant*"<sup>6</sup> comprehensively details the problems associated with trauma and psychological illness in the refugee determination process in Australia. The article "*Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the*

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<sup>2</sup> Discussion of credibility and psychological issues in refugee cases: *SAAK v Minister for Immigration & Multicultural Affairs* [2002] FCAFC 86 (28 March 2002); [2002] FCA 367.

<sup>3</sup> *MIMIA v SCAR* [2003] FCAFC 126 (2003) 75 ALD 151 128 FCR 553.

<sup>4</sup> *SZACW v MI & Anor* [2003] FMCA 307, *Minister for Immigration and Multicultural and Indigenous Affairs v SGLB* [2004] HCA 32 (2004) 207 ALR 12 78 ALJR 992 78 ALD 224, *VMAJ v MIMIA* [2005] FCAFC 21, *Illankovan v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] FCA 220, *Thirukkumar v Minister for Immigration & Multicultural Affairs* [2002] FCAFC 268 (27 August 2002).

<sup>5</sup> According to Clinical psychologist Zachary Steel who provided consultation on these issues to the RRT, he was told by one of the members that an earlier decision they made based on credibility was wrong.

<sup>6</sup> Zachary Steel, Naomi Frommer, Derrick Silove, *International Journal of Law and Psychiatry* 27 (2004) 511–528.

*Testimony of Asylum Seekers*<sup>7</sup> deals with issues of trauma and memory in credibility assessment. On the basis of these articles and the cases referred to above, we make the following recommendations:

1. That all asylum seekers who claim some experience of torture or trauma are assessed by the relevant medical expert before their protection visa application is assessed.
2. That assessments are conducted by medical experts experienced in the areas of torture and trauma and that assessments are carried out in conformity with the guidelines set out in the United Nations *Istanbul Protocol* 1999<sup>8</sup>.
3. That guidelines for decision-makers are prepared by medical experts, specifying types of traumatic experience and indications for need of psychological assessment.
4. That general information regarding the effects of trauma be routinely given to all decision makers and education provided to decision-makers by medical experts.
5. That decision makers are made aware of the weight to be given to expert evidence, i.e. that if a medical expert assesses a person as having a particular condition which has particular effects on their memory or is otherwise relevant to their account of their history, that the decision maker cannot, unless there is some question relating to the professional himself or herself, make another finding on the medical issue. And that decision-makers be instructed to give the evidence appropriate weight.

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<sup>7</sup> Juliet Cohen. *International Journal of Refugee Law* Oxford:Jul 2001. Vol. 13, Iss. 3, p. 293.

<sup>8</sup> Attached.